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February 22, 2006

The Honorable George W. Bush  
President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C.

Dear Mr. President:

It has come to my attention that some within your Administration may be trying to eviscerate an important public safety and anti-terrorism measure enacted into law by the Congress in 2002.

Specifically, Section 127 of the 2002 Bioterrorism Preparedness and Response Act of 2002, directed that you establish a program to make KI (Potassium Iodide) available to State and local governments for distribution to all persons living within a 20 mile radius of a nuclear power plant. Previously, the Nuclear Regulatory Commission (NRC) made KI available only to State governments for distribution to persons living within a 10 mile radius of such plants, and only when the States requested it. I offered the amendment to establish this program during the House Energy and Commerce Committee markup of this legislation. My amendment was accepted by then-Chairman Tauzin, and was subsequently modified in the final conference report on the bill in a bipartisan process in which I participated.

Pursuant to this legislative authority, the Department of Health and Human Services has been preparing guidelines for distribution of KI. An initial version of the guidelines was circulated in 2004, and but HHS's Draft Guidelines were not published in the Federal Register until August 29, 2005. Since the law called for final guidelines to be issued within one year of enactment of the Act, these guidelines are now nearly 3 years overdue.

I note that the National Academy of Sciences study mandated by Section 127 recommended that "KI should be made available to everyone at risk of significant health consequences from accumulation of radioiodine in the thyroid in the event of a radiological accident." The NAS also recommended that "KI distribution should be included in the planning for comprehensive radiological incident response programs for nuclear power plants."

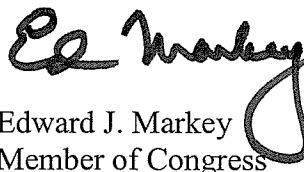
I also note that the Nuclear Regulatory Commission never supported the KI provision, and it has recently come to my attention that the NRC may be trying to circumvent the clear intention of the Congress that KI be made available to communities within a 20 mile radius of a nuclear reactor who request it. Apparently, the NRC is arguing that the President should use Subsection (f) of the Section to withhold Potassium Iodide from the public. Subsection (f) states that:

*“Subsections (a) and (d) cease to apply as requirements if the President determines that there is an alternative and more effective prophylaxis or preventative measures for adverse thyroid conditions that may result from the release of radionuclides from nuclear power plants.”*

This Subsection was aimed at ensuring that if a new drug or substance was discovered that could be used to address the health risks presented by radioactive iodide, that the President would be able to substitute it for KI. This section was never intended to release the Administration from the obligation to make KI available unless such an alternative and more effective prophylaxis or preventative measure were discovered. The Congress was well aware of the arguments advanced by the NRC staff over the years against KI distribution, and did not accept the premise that sheltering and evacuation were a substitute for KI distribution. Instead, Congress viewed KI distribution as a supplement to evacuation and sheltering programs, and mandated an expansion of the area covered by KI distribution beyond the 10 mile radius offered in the NRC's voluntary program. Congress also wished to make KI available to local governments in certain circumstances -- even if those governments were located in states which had not requested KI from the NRC.

I therefore urge you to comply with the intent of Congress and move forward expeditiously to make KI available to those living near nuclear power plants. A failure to do so, or an attempt to circumvent this law by invoking Subsection (f) on the basis of any existing or proposed sheltering or evacuation plans, will leave millions of our fellow citizens vulnerable to thyroid cancers in the event of a successful terrorist attack or catastrophic accident at any one of the nation's 104 operating nuclear reactors. The American people are counting on you to ensure that these citizens who live near these reactor sites are protected.

Sincerely,

  
Edward J. Markey  
Member of Congress

Cc: Chairman Nils Diaz, Nuclear Regulatory Commission